

United States District Court

for the
Western District of New York

United States of America

v.

Case No. 18-MJ-1025

Ivan Hernandez-Hernandez

Defendant

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief:

On or about January 12, 2018, in the Western District of New York, the defendant, IVAN HERNANDEZ-HERNANDEZ, an alien, was found in the United States, after having been previously deported and removed therefrom, on or about April 2, 2013 and on or about June 19, 2015, while an order of deportation or removal was outstanding, without having obtained the express consent of the Attorney General of the United States or the Secretary of Homeland Security to reapply for admission to the United States;

All in violation of Title 8, United States Code, Section 1326(a).

This Criminal Complaint is based on these facts:

☒ Continued on the attached sheet.



Complainant's signature

BRETT M. DUCHMANN
DEPORTATION OFFICER
IMMIGRATION AND CUSTOMS ENFORCEMENT

Printed name and title

Sworn to before me and signed in my presence.

Date: January 25, 2018



Judge's signature

City and State: Buffalo, New York

JEREMIAH J. MCCARTHY
UNITED STATES MAGISTRATE JUDGE

Printed name and title

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

BRETT M. DUCHMANN, being duly sworn, deposes and says that:

1. I am a Deportation Officer ("DO") employed by the United States Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE"), Office of Enforcement and Removal Operations ("ERO"), since September 20, 2015. Additionally, I was employed as an Immigration Enforcement Agent ("IEA") with ICE, until September 19, 2015, and have been employed with DHS for nine years.

2. As part of my duties during my employment with ICE, I investigate violations of the Immigration and Nationality Act and violations of the United States Code, in particular Title 8, United States Code, Section 1326(a), regarding the re-entry of previously removed aliens.

3. This affidavit is being submitted based upon my own knowledge, my review of official records of DHS and ICE, and upon information that I obtained from other law enforcement officers involved with this investigation.

4. I make this affidavit in support of the annexed Criminal Complaint charging IVAN HERNANDEZ-HERNANDEZ with a violation of Title 8, United States Code, Section 1326(a), regarding the re-entry of a previously removed alien.

5. Since this affidavit is being submitted for the limited purpose of securing a criminal complaint, I have not included every fact known to me concerning this investigation. I have set forth only facts that I believe are necessary to establish probable cause to demonstrate that IVAN HERNANDEZ-HERNANDEZ has violated Title 8, United States Code, Section 1326(a).

6. On January 12, 2018, ICE/ERO Buffalo Field Office conducted a targeted enforcement operation at 7108 N Bergen Road, Bergen, NY 14416 in an attempt to locate, identify, and apprehend another individual, Edilser Vasquez-Diaz, (hereinafter referred to as "the target"), a citizen and national of Guatemala, who is illegally present in the United States.

7. Officers previously conducted surveillance, on November 16, 2017, at the aforementioned address. On that date, at approximately 6:50 am, officers observed a male matching the physical description of the target depart the aforementioned address, which was the last known residence of the target, and proceed to the last known place of the target's employment, which was located at 6550 Transit Road, Elba, New York.

8. Thereafter, on January 12, 2018, officers again conducted surveillance at the aforementioned address and at approximately 6:50 am, ICE Officers observed a male subject

who, based on the target's photograph and information in the target's alien file, matched the height, weight, and overall appearance of the target of the investigation. The male subject exited the aforementioned residence and entered a black Ford Mustang with New York license plates which was parked outside of the residence. ICE officers conducted a stop of the vehicle on N. Bergen Road, in Bergen, New York, located in the Western District of New York, where ICE officers identified themselves and asked the driver for identification. The driver produced a Mexican Voter Registration Card in the name of IVAN HERNANDEZ-HERNANDEZ.

9. ICE officers asked IVAN HERNANDEZ-HERNANDEZ as to his immigration status, and he stated that he was a Mexican citizen not legally present in the United States. ICE officers then placed IVAN HERNANDEZ-HERNANDEZ under arrest and transported him to the ICE Office in Batavia, New York for further processing and investigation.

10. A complete set of fingerprints were electronically captured from IVAN HERNANDEZ-HERNANDEZ and submitted to the Federal Bureau of Investigation (FBI), Identification Division, in Clarksburg, West Virginia, via the Integrated Automated Fingerprint Identification System (IAFIS). This set of fingerprints produced a positive biometric match with an Alien Registration Number (AXXX-XXX-102) and an FBI number (XXXXXXHD1) relating to IVAN HERNANDEZ-HERNANDEZ, a native and citizen of Mexico.

11. A review of the documents contained in the Alien Registration file for IVAN HERNANDEZ-HERNANDEZ revealed the following:

- a. On March 21, 2010, the defendant, was arrested by the United States Border Patrol near Rochester, New York and was issued Immigration Form I-862 Notice to Appear. On that date, he admitted to being a native and citizen of Mexico. On November 7, 2012, the defendant was granted voluntary departure by an immigration judge in Buffalo, New York. The defendant was required to depart the United States on or before March 6, 2012.
- b. On or about April 2, 2013, the defendant was removed from the United States to Mexico via the Laredo, Texas Port of Entry. The defendant was issued Immigration Form I-294, advising him that he would be in criminal violation of Title 8, United States Code, Section 1326, if he entered, attempted to enter, or was found in the United States without the permission of the United States Attorney General, or his successor, the Secretary of Homeland Security
- c. On June 18, 2015, the defendant, was arrested by the United States Border Patrol near Brownsville, Texas and was issued Immigration Form I-871 Notice of Intent/Decision to Reinstate Prior order.
- d. On or about June 19, 2015, the defendant was removed from the United States to Mexico via the Gateway Bridge, Texas Port of Entry. The defendant was issued Immigration Form I-294, advising him that he would be in criminal violation of Title 8, United States Code, Section 1326, if he entered, attempt to enter, or was found in the United States without the permission of the United States Attorney General, or his successor, the Secretary of Homeland Security.

12. Based on the above referenced immigration record check, IVAN HERNANDEZ-HERNANDEZ has no valid immigration status and is illegally present in the United States. In addition, there is no evidence of any authorization or approval from the Attorney General of the United States, or the Secretary of the Department of Homeland

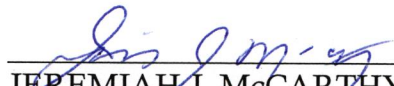
Security, for IVAN HERNANDEZ-HERNANDEZ to have re-entered the United States after his last removal.

WHEREFORE, it is respectfully submitted that probable cause exists to believe that IVAN HERNANDEZ-HERNANDEZ did commit the offense of re-entry after removal, in violation of Title 8, United States Code, Section 1326(a). Specifically IVAN HERNANDEZ-HERNANDEZ, a citizen and native of Mexico, having been physically removed from the United States on April 2, 2013, and on June 19, 2015, was thereafter found present in the Western District of New York on January 12, 2018, without prior authorization or approval from the Attorney General of the United States or the Secretary of the Department of Homeland Security.



BRETT M. DUCHMANN
Deportation Officer
Immigration & Customs Enforcement

Sworn to before me this 25th
day of January, 2018.


JEREMIAH J. McCARTHY
United States Magistrate Judge